IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8847 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTINIKETAN EDUCATION TRUST

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 8847 of 2002

MR MUKESH R SHAH for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP,for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/12/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a direction to the State of Gujarat, Commissioner of Higher Education

and District Education Officer, Narmada district to pay grant to the petitioner- Trust for salary as well as for maintenance for running Shantiniketan Kanya Vidyalay at village Gangapura, Taluka Dadiyapada, Dist. Bharuch which is admittedly a tribal area.

2. In response to an advertisement dated 15-9-1997, the petitioner had applied for recognition with grant for running a girls school in the tribal area. The applications were invited for registration of secondary schools from persons intending to start secondary schools from June, 1998. It was mentioned in the said advertisement that institutions establishing schools for girls shall be eligible for grant. The State Government had instructed the respondent- Secondary Education Board that before granting recognition the Board shall enquire whether there was real need for starting a new school in the area and whether opening of a new school will have an adverse effect on the schools already there. All other relevant inquiries were also required to be made before processing the applications for grant. The respondent-Board scrutinised 428 applications from institutions which had applied for recognition with grant and after scrutiny, the Board prepared a list of 15 institutions which deserved to be recognised with grant as per the general instructions given by the State Government vide letter dated 6-7-1998. The petitioner-institution was one of the institutions whose name figured in the said list of selected institutions sent by the Board to the State Government. By letter dated 8-1-1999, the State Government instructed the Board that all the institutions whose applications were accepted by the Board, that is all the institutions other than 15 institutions included in the list recommended by the Board, be informed that their applications were rejected and that even the recommended 15 institutions be informed that for lack of adequate allocation in the budget, the said schools would also not be granted recognition with grant. The Board accordingly carried out the instructions. However, by letter dated 24-3-1999, the State Government instructed the Board to give recognition with grant to 5 institutions for starting grantable secondary schools for girls. That communication dated 24-3-1999 did not include the petitioner's name and that decision came to be challenged before this Court in Special Civil Applications No.2498 of 1999 and connected matters. The petitions came to be allowed by this Court's judgment dated 30-12-1999. This Court found that out of the 5 institutions which were granted recognition with grant by the impugned decision dated 24-3-1999, the applications of three institutions

were earlier rejected by the Board on various grounds such as the building was not suitable or that the need of the school was not established. In case of Shri Leuva Patel Kanya Kelavani Mandal, Gondal, the proposal was rejected by the Board on both the grounds aforesaid. From the said judgment dated 30-12-1999 in Special Civil Application No.2498 of 1999 and connected matters it also appears that 3 institutions which were granted recognition with grant by the impugned communication dated 24-3-1999 had funds to the extent of Rs.3 crores, apart from each of those 3 institutions owning lands admeasuring 8 to 15 acres. This Court, therefore, found the impugned decision dated 24-3-1999 as arbitrary and illegal and quashed and set aside the same in the following terms:-

"18. In the result, the decision of the State Government as contained in the letter dated 24-3-1999 addressed to the Gujarat Secondary Education Board and the consequential orders of the said Board are hereby quashed and set aside. Respondents No.1 and 2 are directed to consider the case of the petitioners and other institutions (except respondents No.4 and 6) whose names were recommended by the Gujarat Secondary Education Board on 12/13-8-1998 for grant of recognition with grant as per the instructions issued by the Government itself earlier, afresh in light of the observations made in this judgment and on the basis of the Grant in Aid policy which was in force when the State Government took the impugned decision dated 24-3-1999. If the policy was liberalised thereafter, such liberalised policy shall be taken into account.

19. While the aforesaid decision dated 24-3-1999 of the State Government for giving grant to respondents No. 3 to 7 is quashed and set aside with immediate effect without making any recovery of the grant already paid so far, the order of respondent-Board passed in April, 1999 conferring registration on respondents No.3, 5 and 7 are quashed with effect from immediately upon expiry of the academic year 1999-2000.

20. It is clarified that the orders of respondent-Board granting registration to respondents No.4 and 6 are not disturbed by this judgment but they shall not hereafter be paid grant, though no recovery shall be made for grant

already paid so far.

21. It is also clarified that this judgment shall not come in the way of respondents No.3, 5 and 7 applying for, and respondents No.1 and 2 considering, registration without grant-in-aid for secondary schools already started by them on the basis of the State Government's decision dated 24-3-1999 and consequential orders of respondent-Board.

3. Pursuant to the aforesaid decision, the Secondary Education Board reconsidered the matter at its meeting held on 17-1-2000 and Resolution No.576 of 1999 passed at the said meeting is produced at Annexure `B' to the petition. By the said resolution, 5 institutions in tribal areas and 8 institutions in non-tribal areas were granted recognition with grant w.e.f. June, 1998. The petitioner-institution figures at Sr. No.3 in the list of institutions granted recognition with grant in tribal areas. In non-tribal areas, 8 institutions were granted such recognition with grant, of which mention is required to be made of Shri Patel Vidyarthi Ashram, Amreli for running a girls school at Amreli and Shri Samast Karadiya Rajput Samaj Stri Kalyan and Kanya Kelavani, Trust, Surendranagar for running a girls school at Surendranagar.

4. It appears that the institutions whose recognition with grant was quashed by this Court's judgment dated 30-12-1999 preferred a Letters Patent Appeal and an ad-interim order of status-quo was passed in their favour. In any case, the direction given by this Court on 30-12-1999 was operative qua the other institutions whose applications (though recommended by the Board) were not accepted by the State Government. Pursuant to the aforesaid resolution dated 17-1-2000, the Board issued orders dated 27-4-2000 (Annexure C) granting recognition subject to several conditions and thereafter with a clarification that the order did not entitle the institutions to get grant-in-aid from the Government automatically since matters pertaining to grant were not within the purview of the Board and, therefore, the management shall have to make an application to the Commissioner of Higher Education through the DEO for the purpose of obtaining the grant. Pursuant to the aforesaid recognition dated 27-4-2000, the petitioner-institution started the school - one division of Std.8 from June, 2000 and one division of Std.9 from June, 2001 and one division of Std. 10 from June, 2002.

5. The grievance in the present petition is that in spite of the petitioner having been granted recognition at the culmination of the process which was initiated for granting recognition with grant to 15 institutions way back in the year 1997 and in spite of the fact that the petitioner-institution was already included in the list of institutions selected and recommended by the Gujarat Secondary Education Board before March, 1999, and in spite of the fact that it was on account of arbitrary and illegal action on the part of the State Government that recommendation made by the Board was not accepted by the Government in March, 1999 and, therefore, this Court had to intervene and direct the authorities to reconsider the matter as per the judgment dated 30-12-1999 with the result that the formal orders of recognition could be issued only in April, 2000 and the classes commenced from June, 2000. Thereafter, the petitioner immediately made applications for grant through proper channel and DEO also recommended the same but the Commissioner of Higher Education has not passed any orders sanctioning the grant.

6. Mr MR Shah for the petitioner also points out that Shri Patel Vidhyarthi Ashram, Amreli and Shri Samast Karadiya Rajput Samaj Stri Kalyan and Kanya Kelavani Trust, Surendranagar were 2 out of the 8 institutions which were granted recognition in non-tribal areas by the same Resolution dated 17-1-2000 and that the petitioner has made a specific averment on oath in paragraph 13 of the petition that the respondent-authorities have also sanctioned grant in favour of such institutions with effect from June, 1999 although they also could not have started any classes before April, 2000. Mr Shah further states that the 4 other institutions which were granted recognition by the same resolution in tribal areas are already getting grant on the basis of the previous Government Resolution dated 1-9-1997.

7. Ms Manisha Lavkumar, learned AGP appearing for the respondents has submitted that no orders are passed as yet on the petitioner's application for sanctioning the grant in favour of the petitioner-institution. Before the petitioner-institution was granted recognition in April, 2000, the State Government has already issued Government Resolution dated 30-6-1999 cancelling the Government Resolution dated 1-9-1997 for giving 100% grant to girls school and it is the said resolution dated 1-9-1997 of which the petitioner -institution wants the benefit. Reliance is also placed on the affidavit dated 21-10-2002 filed by the DEO, Narmada district taking up the aforesaid stand.

8. Having heard the learned counsel for the parties, it appears to the Court that when the petitioner-institution was one of the 15 institutions which were selected and recommended by the Gujarat Secondary Education Board well before March, 1999 and it was on account of the arbitrary and illegal decision of the State Government taken on 24-3-1999 that the entire exercise had to be undertaken again by the Board and, therefore, recognition orders could be passed in April, 2000 and the petitioner could start the classes from June. 2000 onwards, the respondent-authorities cannot reject the petitioner's claim for grant on the basis of the subsequent resolution dated 30-6-1999.

9. It, therefore, appears to the Court that in the peculiar facts and circumstances of this case, particularly the fact that injustice was done to the petitioner-institution by the State Government earlier in March, 1999 which decision was quashed by this Court's judgment dated 30-12-1999 and that the Board did grant recognition to as many as 13 institutions w.e.f. June, 1998 as was originally intended and also considering the fact that out of those 13 institutions many other institutions are already being given grant as per the aforesaid statement made in the petition, there does not appear to be any justification for denying grant to the petitioner-institution.

10. In view of the above, the respondent authorities are directed to consider the petitioner's application for grant on the basis of the Government Resolution dated 25-10-1989 and other subsequent resolutions amending such policy from time to time which were in force before 30-6-1999 and to consider the petitioner's case on the same lines on which the cases of other institutions granted recognition by the Board's Resolution No.576 of 1999 dated 17-1-2000 have been considered by the respondent-authorities.

It is clarified that the petitioner will be entitled to get the grant only with effect from the date on which the classes were actually opened by the petitioner-institution.

The aforesaid direction shall be carried out within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M.S. Shah,J)
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